



Kelley. Ms. White was a 71-year old grandmother who resided in Sutherland Springs, Texas.

3. Kelley's rampage was the deadliest mass shooting by a single individual in Texas, the deadliest mass shooting in a place of worship in America in modern history, and the fifth deadliest mass shooting in the United States.
4. On November 7, 2012, while serving in the United States Air Force, Kelley plead guilty in a court-martial proceeding to domestic violence assault charges, for violent acts committed against his wife and stepson. The allegations supporting this sentence included unlawfully striking, choking, kicking, and threatening his wife with a loaded firearm, and striking a child in the head and body with force likely to produce death or serious bodily harm.
5. Pursuant to the plea, numerous other charges were dismissed, including charges that Kelley pointed firearms at his wife on more than one occasion. Kelley was demoted, was issued a bad conduct discharge and sentenced to twelve months of confinement in a military prison.
6. Federal law requires that the United States Air Force (USAF) report military convictions for assault under Article 128 (domestic violence) to the federal data base system for conducting background checks for firearms purchases. The purpose of this legal obligation is to prevent individuals convicted of domestic violence from purchasing firearms. As such, Kelley was prohibited by law from purchasing or possessing firearms and ammunition due to the military conviction for domestic violence on November 7, 2012.

7. The Air Force failed to record the conviction with the Federal Bureau of Investigation (“FBI”) National Crime Information Center (“NCIC”) database, the database used by the National Instant Check System (“NICS”) to flag prohibited firearm purchases.
8. In April of 2016, Kelley purchased a Ruger AR-556 semi-automatic rifle from Academy Sports and Outdoors in San Antonio. The sale was approved by the National Instant Criminal Background Check System because the system contained no record of Kelley’s 2012 domestic violence conviction.
9. As a result of the Air Force’s failure to record the conviction with the NCIC Database, Kelley used the purchased Ruger AR-556 to take the life of Petitioner’s mother, who was also the grandmother of Kelley’s ex-wife, and more than two dozen others, including infants and children.

**Basis For Rule 27 Petition**

10. Roy White expects to be a party to a cognizable action but is presently unable to bring said action. Specifically, Petitioner is unable to bring a lawsuit until he has exhausted all of his administrative remedies under the Federal Tort Claims Act. Therefore, at this time the Petitioner brings this **PETITION TO PERPETUATE TESTIMONY PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 27** for the purposes of perpetuating known testimony and gathering known evidence, which is at risk of being lost or destroyed due to the following: **(1)** There is a strong likelihood of losing witnesses and/or witnesses forgetting information over time; and **(2)** There is a strong likelihood that documents will be lost or destroyed under the current Records Disposition Schedule, including but not limited to, Table & Rule T51 – 03 R 06.00 (pg. 1945) (requiring records to be destroyed one year after the completion of appellate review); Table and

Rule T51 - 03 R 53.00 (pg. 1965) (requiring records to be destroyed when they are no longer needed); Table and Rule T51 – 03 R 54.00 (pg. 1965) (requiring records to be destroyed one year after completion of appellate review), and other records disposition rules.

11. Federal Jurisdiction exists because this matter involves an action against the United States Air Force, and others, for which the testimony would be perpetuated.
12. Venue is proper before this Court because Devin Patrick Kelley was domiciled in New Braunfels, Texas at the time of the occurrence which gives rise to this cause of action. Therefore, venue is proper before the San Antonio Division of the United States District Court for the Western District of Texas.
13. Devin Patrick Kelley was known by the Respondents to be a violent and dangerous individual, as evidenced by the General Court-Martial Order dated April 10, 2014. (*See Exhibit - A*).
14. Pursuant to Department of Defense Instruction Number 5505.11, the Respondents had a duty to report Kelley's criminal history data to the Criminal Justice Information Services ("CJIS") Division of the Federal Bureau of Investigation for inclusion in the NCIC Database. (*See Exhibit – B*).
15. Had Kelley's conviction been recorded in the NCIC Database, it would have appeared in a federal background check and prevented his purchase of the firearms used in the Sutherlands Springs, Texas massacre. The Respondents owed a duty to exercise reasonable care to protect the Petitioner, his family, and all others from harm posed by Devin Patrick Kelley, but they failed in that duty.

16. Petitioner seeks to preserve the testimony which confirms the USAF failed to report Kelley's criminal history to the CJIS Division of the FBI, for entry into the NCIC database.
17. Petitioner expects the following entities to be adverse parties to this action: **(1)** The United States Airforce (USAF), 1690 Airforce Pentagon, Washington, D.C. 20330; **(2)** The Estate of Devin Patrick Kelley, 2825 FM 2722, New Braunfels, TX 78132; and **(3)** Any Third-Party contractor who may have been hired to report Kelley's conviction and criminal activity with the FBI and the NCIC database.
18. Petitioner wishes to perpetuate testimony from:
  - (1)** The Program Manager for the Criminal Justice Information Services (CJIS), Air Force Office of Special Investigations (AFOSI);
  - (2)** Colonel Jeffrey J. Slagle, USAF, Staff Judge Advocate, HQ AF Material Command, HQ AFMC/JA, 4225 Logistics Ave, Rm N237, Wright Patterson, AFB, Ohio, 45433;
  - (3)** The Custodian of Records for the Record of Trial pertaining to Devin Kelley's court martial(s) who is believed to be located at HQ ACC/JA, 220 Sweeney, Suite 122, Joint Base Langley-Eustis VA 23665;
  - (4)** Hattie Simmons; who is believed to be located at HQ ACC/JA, 220 Sweeney, Suite 122, Joint Base Langley-Eustis VA 23665;
  - (5)** The current Confinement Officer for the Davis-Monthan Air Force base, located at Davis-Monthan Airforce Base, Tucson, AZ 85756;

(6) The Confinement Officer who was on duty for the Davis Monthan Air Force Base on January 14, 2013, located at the Davis-Monthan Airforce Base, Tucson, AZ 85756;

(7) The Confinement Officer who was on duty for the Davis Monthan Air Force Base on April 10, 2014, located at the Davis-Monthan Airforce Base, Tucson, AZ 85756;

(8) The individual who was in charge of reporting Devin Kelley's Court Martial(s) and Criminal Conviction(s) to NCIC database, or any other federal administrative agencies or databases, this person is believed to be located at the Davis-Monthan Air Force base, located at Davis-Monthan Airforce Base, Tucson, AZ 85756;

(9) The current Confinement Officer for the Naval Consolidated Brig, Miramar, San Diego, CA 92145; and

(10) The Confinement Officer who was on duty for the Naval Consolidated Brig, Miramar, San Diego, CA 92145, for the time period when Devin Kelley was confined at the facility after he was court-martialed in 2012.

19. From these individuals, the Petitioner wishes to obtain

(1) The entire Record of Trial for any and all Court Martials pertaining to Devin Kelley;

(2) All confinement records pertaining to Devin Kelley;

(3) The results of all blood tests, drug tests, and alcohol tests, pertaining to Devin Kelley;

- (4) The results of all autopsies, pertaining to Devin Kelley;
- (5) Known evidence, including documents and testimony, regarding the failure of the USAF to report the criminal convictions to the NCIC Database;
- (6) Records pertaining to the investigation by the USAF, or any other governmental body, regarding the failure of the USAF to report Kelley's criminal convictions to the NCIC Database;
- (7) Retrieval of all Court Martial records of Devin Kelley, including all criminal records and records of investigation into the crimes committed by Kelley;
- (8) Records of all crimes which the USAF is required to report to the FBI, the NCIC, and the NICS or any other federal agency or database for the purpose of monitoring individuals who are prohibited from purchasing firearms, for a time period of 5 years before Devin Kelley's court martial;
- (9) Records of all crimes which the USAF is required to report to the FBI, the NCIC, and the NICS or any other federal agency or database for the purpose of monitoring individuals who are prohibited from purchasing firearms, for a time period after Devin Kelley's court martial, up to the present;
- (10) All reprimands which were issued to any individual, individuals, or agencies for failure to report information to any federal agency or database, which would have prohibited a person from purchasing a firearm;

(11) All records, including any and all emails, pertaining to Devin Kelley's criminal convictions, court martial(s), and the Sutherland Spring, Texas shooting;

(12) The procedures for reporting criminal convictions to the NCIC Database;

(13) The name and rank of the individuals within the USAF who failed to report the criminal convictions to the NCIC Database; and

(14) The names, addresses and contact information of third party contractors, if any, hired to report criminal convictions to the NCIC Database.

Petitioner wishes to elicit the personal knowledge of these individuals regarding Kelley's violent nature and propensity for violence, along with the probability that he would commit future violent acts, which is based on their personal interactions with Kelley.

20. The testimony and documents sought will probably be lost if the **PETITION TO PERPETUATE TESTIMONY PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 27** is not authorized. Additional risks of loss include, but are not limited to, the overseas deployment of the individuals listed in Paragraph 18.
21. This **PETITION** will allow not only the named Petitioner, but all victims and their families, the authorization to obtain and preserve vital evidence from all witnesses so that claims can prosecuted against all those responsible for this human atrocity.

**WHEREFORE**, Petitioner respectfully requests that this Court issue an order permitting Mr. White to take the depositions of the individuals listed in Paragraph 18.



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**CERTIFICATE OF SERVICE**

This will certify that a true and correct copy of the above and forgoing instrument was duly served upon the following in accordance with the Federal Rules of Civil Procedure on this the 11th day of January, 2018.

**VIA E-Service**

John F. Paniszczyn  
Assistant United States Attorney  
U.S. Attorney's Office  
601 N.W. Loop 410, Suite 600  
San Antonio, Texas 78216  
Tel. (210) 384-7325  
Fax: (210) 384-7312  
*Attorney for the United States Air Force*

**Via First Class Mail**

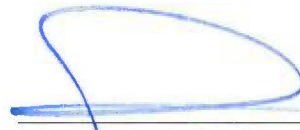
**Via CMRRR: 7017 1450 0000 5028 1487**

Michael S. Kelley  
The Estate of Devin Patrick Kelley  
2858 FM 2722  
New Braunfels, Texas 78132  
*Father of Devin Patrick Kelley*

**Via First Class Mail**

**Via CMRRR: 7017 1450 0000 5028 1494**

Rebecca A. Kelley  
The Estate of Devin Patrick Kelley  
2858 FM 2722  
New Braunfels, Texas 78132  
*Mother of Devin Patrick Kelley*

  
\_\_\_\_\_  
Marco Crawford

STATE OF TEXAS

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COUNTY OF BEXAR

**VERIFICATION**

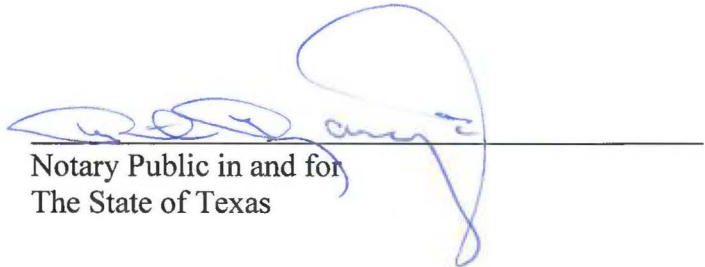
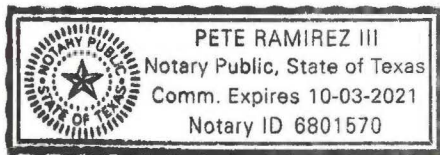
Before me, the undersigned notary, on this day personally appeared **Marco Crawford**, the affiant, a person whose identity is known to me. After I administered an oath, affiant testified as follows:

“My name is **Marco Crawford**. I have read the **Second Amended Verified Petition to Perpetuate Testimony Pursuant to Federal Rule of Civil Procedure 27**. The facts stated within the Petition are within my personal knowledge and are true and correct.”



\_\_\_\_\_  
**Marco Crawford**

SWORN TO AND SUBSCRIBED before me by **Marco Crawford** on the 11<sup>th</sup> day of JANUARY, 2018, to certify which witness my hand and seal of office.



\_\_\_\_\_  
Notary Public in and for  
The State of Texas

STATE OF TEXAS

§  
§  
§

COUNTY OF DENTON

**VERIFICATION**

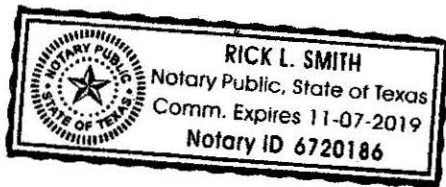
Before me, the undersigned notary, on this day personally appeared **Roy White**, the affiant, a person whose identity is known to me. After I administered an oath, affiant testified as follows:

"My name is **Roy White**. I have read the **Second Amended Verified Petition to Perpetuate Testimony Pursuant to Federal Rule of Civil Procedure 27**. The facts stated in it are within my personal knowledge and are true and correct."



Roy White

SWORN TO AND SUBSCRIBED before me by **Roy White** on the 11<sup>th</sup> day of JANUARY, 2018, to certify which witness my hand and seal of office.



Notary Public in and for  
The State of Texas